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Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 19 2009
WAC 07 267 51859

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a postdoctoral researcher at the University of Texas Southwestern Medical Center (UTSMC), Dallas. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits citation documentation and a personal statement.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the petition on July 23, 2007. In a statement accompanying the initial filing, the petitioner stated:

I have extensive experience in the nationally critical field of organic chemistry, focusing on the development of new synthetic methodology and the synthesis of biologically important natural products. . . .

[W]hile pursuing my doctoral degree at the University of Missouri [UM] at St. Louis, I successfully synthesized non-racemic allylic hydroxy phosphonates, which are used in the synthesis of natural or biologically active compounds as single enantiomers (stereoisomers) that are of paramount importance in the drug development process. . . .

In the last year of my graduate research, I made one of the most important contributions to the organic chemistry field by developing a novel method for the synthesis of nitrogen and oxygen heterocycles by palladium catalyzed cyclization. This reaction is highly efficient and stereoselective, and the products are extremely important substructures which frequently appear in numerous bioactive natural products (many of them have never been synthesized yet). . . .

I have continued my record of significant scientific achievement as a post-doctoral researcher at the University of Texas Southwestern Medical Center . . . by making outstanding contributions to bioactive natural product synthesis and to the development of new synthetic methodologies. One of the most prominent contributions is the first total synthesis and stereochemical assignment of FR252921, a promising immunosuppressant. . . . It is a potential immunosuppressive drug to prevent rejection of transplanted organs and to treat autoimmune diseases. . . .

In addition, I have made tremendous contributions to the development of several new chemical procedures utilizing novel organochromium and organoiron reagents.

The petitioner submitted copies of his published articles, and stated: "Due to my revered standing in the research community, my research has been cited numerous times by leading experts and scientists throughout the field. . . . These citations can surely prove the impact of my research work in the field of organic synthesis." A printout from a citation database showed citations for four of his articles.

The petitioner submitted six witness letters with the initial filing. UM Professor [REDACTED] stated:

I was the Ph.D. advisor of [the petitioner] and I have known him since he joined my research group in 2000. . . .

[The petitioner] started his PhD research in my laboratory on the asymmetric synthesis of 1-substituted phosphonates. . . .

[The petitioner] continued this project and synthesized a series of functionalized phosphonates by reaction of the non-racemic allylic hydroxy phosphonates with functionalized alkenes using ruthenium catalyzed cross-metathesis. . . . These functional allylic hydroxy phosphonates are extremely useful synthetic intermediates. . . .

In the last year of [the petitioner's] research, he expanded this methodology and made one of the most important contributions to the organic chemistry field by developing a novel method for the synthesis of tetrahydrofurans (thf) and tetrahydropyrans (thp). . . .

[The petitioner's] achievements demonstrate that he is a tremendous organic chemist at the top of his field. His ability in designing reactions and solving problems is outstanding.

UM Professor [REDACTED] stated:

[The petitioner] was able to develop a unique stereoselective synthesis of nitrogen and oxygen heterocycles through palladium catalyzed addition of nitrogen and oxygen nucleophiles to the allylic phosphonates. The products, nitrogen and oxygen heterocycles, are core structures of numerous biologically active natural products. This is the first instance in which phosphorus was utilized to synthesis [*sic*] these synthetically useful organic intermediates.

The witnesses quoted above described the petitioner's doctoral studies in technical detail, but did not explain why this work was particularly significant. The assertion that the petitioner was the first to achieve a particular reaction or synthesis is not remarkable in and of itself, unless we start from the unlikely presumption that most chemical researchers in academia devote their time to duplicating the work of others rather than attempting new discoveries.

UTSMC [REDACTED] stated:

Since joining my laboratory in August 2005, [the petitioner] has made significant contributions to several research projects. One of the most prominent is the first total synthesis and stereochemical assignment of FR252921, a promising immunosuppressant that operates by a unique mechanism of action. . . . My research group had worked on FR252921 for two years before [the petitioner] assumed responsibility for the project and brought the synthesis to a successful conclusion. . . . Since then, research groups in France and China have contacted us for the detail[ed] experimental procedures to assist in their own programs in this area. After achieving the milestone of preparing FR252921 and some analogs, [the petitioner] initiated a collaboration with a prominent immunologist, [REDACTED] an, M.D., at UT Southwestern to identify the specific molecular target of FR252921 and evaluated as a potential first-in-class therapy for several intractable autoimmune diseases.

The remaining initial witnesses have not worked with the petitioner. [REDACTED] of the University of Iowa, Iowa City, described the petitioner's work in technical detail and stated that the petitioner "has already made a significant impact in the fields of organic synthesis and drug discovery."

[REDACTED] of the Medical College of Wisconsin, Milwaukee, stated:

[The petitioner] successfully finished the total synthesis of FR252921. . . . It drew a great deal of attention from organic chemists. . . . Notably, nobody else has completed a total synthesis of FR252921 until now. . . . [The petitioner] was the first scientist to finish the total synthesis of this compound, and elucidated its absolute structure . . . which could eventually lead to the development of a new immunosuppressive drug. I strongly believe this achievement will positively impact the field of immunology and will draw more attention from both organic chemists and immunologists in the future.

Principal Scientist at GlaxoSmithKline, Research Triangle Park, North Carolina, stated:

[The petitioner's] work not only provided the first synthesis of FR252921 confirming its structure but it also provided a modular synthetic pathway to other potential immunosuppressants. . . . Having the possibility of more diverse molecules in hand may lead to a major breakthrough in better understanding the immunological and pathological mechanisms of the autoimmune diseases.

On August 21, 2008, the director issued a request for evidence, instructing the petitioner to submit further documentation of the citation of his work, including copies of citing articles. In response, the petitioner submitted a table, which he himself apparently prepared, showing citations of six of his articles. The petitioner also submitted two overlapping printouts from different citation databases. The petitioner also submitted copies of 27 citing articles.

The petitioner submitted a printout of the July 16, 2007 edition of the American Chemical Society's *Heart Cut*, described by its publisher as "a weekly feature . . . that collects and summarizes innovative ideas from the larger body of chemical literature." A piece in *Heart Cut* reported: "J.R. Falck and co-workers . . . developed a synthesis strategy" for FR252921.

The petitioner also submitted several new independent witness letters. of Emory University, Atlanta, Georgia, stated:

[The petitioner] demonstrated outstanding skills as a synthetic organic chemist. . . . He was the first person to finish the total synthesis and stereochemical assignment of the natural product FR 252921, which drew a great deal of attention from medicinal chemists due to its unique structure and potent immunosuppressive activity. . . .

Besides his extraordinary accomplishments in the total synthesis of biologically active natural products, [the petitioner] has also made great contributions in the development of new processes and synthetic methods for chiral, non-racemic biologically active compounds. . . .

Recently, my own research group developed a unique process . . . [of] transformation of organosulfur compounds that occurs under mild conditions. [The petitioner's] new method for the asymmetric synthesis of α -(hydroxyalkyl)stannanes came right on time for our project. . . .

In my opinion, [the petitioner] is genuinely outstanding.

[redacted] of the University of Waterloo, Canada, stated that the petitioner's work with the synthesis of α -hydroxy phosphonates "has attracted significant attention in the organic synthesis community." He also stated:

I have worked on the stereoselective synthesis of α -hydroxy and α -amino stannanes for 20 years. . . . There were totally more than 10 different methods published world-wide, including many from my lab, on the stereoselective synthesis of α -hydroxystannanes. However, a practical, widely adapted synthetic route was still not available before [the petitioner's] method came out. . . . [H]is synthetic method is by far the most efficient, practical method for the asymmetric synthesis of α -hydroxystannanes. . . . [W]e are already using this method in my laboratory.

[redacted] of the University of Kansas, Lawrence, described several of the petitioner's graduate and postdoctoral projects, and stated that the petitioner's synthesis of FR252921 "is a huge achievement."

[redacted] of Nantes University, France, discussed the petitioner's work in technical detail and praised its "high quality."

The director denied the petition on November 6, 2008, stating:

[Y]ou failed to submit the requested list of citations of your publications from a respected professional citation service. Instead, you have submitted an un-acceptable self-generated "List of publications that cited my papers." The lack of this evidence seriously affects the ability of the Service to adequately access [*sic*] the impact of your publications on your field of endeavor.

On appeal, the petitioner stated: "I was only asked to submit copies of published articles by other researchers citing my research, but NOT specifically a list of citations of my publications." The director, in the request for evidence, did ask for a printout from a citation database and "a citation list," and the record shows that the petitioner did submit two printouts from identified citation databases to accompany the petitioner's self-generated citation table.

More fundamentally, the petitioner had submitted copies of over two dozen citing articles. These articles are, by definition, first-hand proof of citation of the petitioner's articles. The director did not explain why the articles themselves were not sufficient evidence of the citation of the petitioner's work.

In the denial notice, the director found that the witness letters offered only general information about the petitioner's work and "do not persuasively show that [the petitioner has] had an impact on the field" that would justify a waiver. On appeal, the petitioner contests this finding, noting that the letters, including several from independent witnesses, provided specific details about his work and its significance.

Upon careful review of the record, we find that the petitioner has submitted satisfactory evidence of eligibility. The petitioner has documented several citations of his work. The number of citations, by itself, does not appear to be sufficient to establish eligibility, but the petition does not rest solely on those citations. The petitioner has also submitted credible and persuasive letters from a wide variety of independent witnesses who have attested, in detail, to the significance and value of the petitioner's work. While not all of these details are clear to laypersons, in the aggregate the letters point out clearly enough that the petitioner has produced well-received solutions to difficult problems in his specialty. The witnesses do not simply assert that the petitioner was the first to perform some action, as though being the first were sufficient to qualify him for the waiver (which is not the case). Furthermore, the record shows that the petitioner's work has significant real-world applications (such as in medicine); its significance is not limited only to a rarefied few in an obscure academic subspecialty.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.